

UNITED STATES COURT OF APPEALS December 12, 2011  
FOR THE TENTH CIRCUIT Elisabeth A. Shumaker  
Clerk of Court

LUCIO SALGADO-TORIBIO,

Petitioner,

v.

No. 11-9537

ERIC H. HOLDER, JR., United States  
Attorney General,

Respondent.

**ORDER**

Before **HARTZ, O'BRIEN** and **MATHESON**, Circuit Judges.

The petitioner seeks review of a decision by the Board of Immigration Appeals denying his motion to reopen his proceedings. The government has filed a motion to dismiss, arguing that this court lacks jurisdiction.

Although under 8 C.F.R. § 1003.2(a) the BIA has discretion to reopen and reconsider an earlier decision, this court lacks jurisdiction to consider the refusal of the BIA to exercise this discretion. *Belay-Gebbru v. INS*, 327 F.3d 998, 1000-01 (10th Cir. 2003) (holding that because there is no meaningful standard against which to judge the BIA's exercise of its discretion, the court lacked jurisdiction to

review the petitioner's claim that the BIA should have *sua sponte* reconsidered his case).

Accordingly, the government's motion to dismiss is **GRANTED**, and this appeal is **DISMISSED**. The petitioner's motion to proceed *in forma pauperis* is **GRANTED**.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter  
Deputy Clerk/Jurisdictional Attorney